



UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES

Case No. 2016-975

Auda (Applicant)

v.

Secretary-General of the United Nations (Respondent)

Order No. 271 (2016)

1. On 26 August 2016, the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) issued Judgment No. UNDT/NY/2016/117 in the case of *Auda v. Secretary-General of the United Nations*. Mr. Hesham A. Auda filed his appeal against the Judgment with the United Nations Appeals Tribunal (Appeals Tribunal) on 23 October 2016. His appeal is accompanied by four annexes.

2. On 25 October 2016, Mr. Auda submitted a motion, in which he requests to file Annex 4 of the appeal *ex parte*. He proffers Annex 4 as evidence of his loss in income as a result of the allegedly unlawful non-renewal of his fixed-term appointment. In support of his motion, Mr. Auda argues that Annex 4 contains confidential personal tax information, which he does not wish to share with the Secretary-General. He states that the lack of knowledge of this information will not hinder the Secretary-General's preparation or delay his submission of an answer to the appeal. In the alternative, Mr. Auda seeks leave to withdraw Annex 4.

3. Having reviewed the substance of Annex 4 and for the reasons set out hereafter, there is no good cause not to serve Annex 4 on the Secretary-General. As stated by the Appeals Tribunal in *Bertucci*, "the Tribunal may not use a document against a party unless the said party has first had an opportunity to examine it".¹ Thus, as a general rule, in the absence of exceptional circumstances, documents that are relevant to the issues of the case submitted by one party are to be served on the other party.

4. Annex 4 is *prima facie* relevant to the issues of the case since the annex may serve as a basis for the calculation of potential compensation for loss in income. The Secretary-General therefore may require the information contained therein in order to

¹ *Bertucci v. Secretary-General of the United Nations*, Judgment No. 2011-UNAT-121, para. 50.

effectively prepare his submissions in response to the appeal. As a result, its disclosure is necessary in the interest of fairness. The fairness requirement outweighs Mr. Auda's desire to protect the confidentiality of his personal tax information.

5. For the foregoing reasons, Mr. Auda's motion to classify Annex 4 *ex parte* should be denied.

6. However, if Mr. Auda does not wish to include the document that he is not willing to show to the opposing party, I grant him the opportunity to amend his appeal and refile it within 10 calendar days from the date of this Order. Therefore, the time line for the filing of the amended appeal is Monday, 21 November 2016 (New York Time).

IT IS HEREBY ORDERED THAT Mr. Auda file the amended appeal by Monday, 21 November 2016. Should he fail to comply with this Order, Mr. Auda's motion for *ex parte* filing will be dismissed with the resultant consequences.

Original and Authoritative Version: English

Dated this 10th day of November 2016
in Port of Spain, Trinidad & Tobago.

(Signed)
Judge Deborah Thomas-Felix,
President

Entered in the Register on this 10th day of
November 2016 in New York, United States.

(Signed)
Weicheng Lin, Registrar